

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:	)	
	)	Chapter 7
LOUISE M. SCHWICKERATH,	)	
	)	
Debtor.	)	Bankruptcy No. 05-04512
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UNITED STATES TRUSTEE,	)	
	)	Adversary No. 06-9066
Plaintiff,	)	
	)	
vs.	)	
	)	
LOUISE M. SCHWICKERATH,	)	
	)	
Defendant.	)	

**ORDER RE COMPLAINT OBJECTING TO DISCHARGE**

This matter came on for trial on October 18, 2006 on the U.S. Trustee's Complaint Objecting to Discharge. Plaintiff U.S. Trustee was represented by Assistant U.S. Trustee Janet Reasoner. Debtor Louise Schwickerath appeared in person and was represented by Attorney Rodney Mulcahy. After the presentation of evidence and argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J).

**STATEMENT OF THE CASE**

U.S. Trustee requests denial of Debtor's discharge pursuant to §§ 727(a)(2) and 727(a)(4)(A). The complaint alleges that Debtor failed to disclose substantial property on her bankruptcy schedules, she intentionally undervalued certain property, intentionally misrepresented whether or not liens existed on certain assets, and intentionally misrepresented the nature of certain assets. The complaint also alleges that Debtor liquidated a substantial annuity and purchased exempt assets prepetition. Debtor denies any fraudulent intent. She asserts that she took whatever remedial measures were necessary, including amending her schedules, when she realized the original schedules were deficient.

**FINDINGS OF FACT**

Debtor Louise Schwickerath lives outside the town of New Hampton, Iowa on a 9.2 acre plot of land. She has been employed at Tri Mark Corporation in New Hampton as an assembler for

approximately 8 years. Mrs. Schwickerath has a high school education and is the mother of five children. Her husband is deceased.

Though Debtor's Chapter 7 petition was filed on September 15, 2005, its genesis can be traced to events which happened a few years earlier. The first of these events was the death of Debtor's husband on August 21, 2003. Mr. Schwickerath had a substantial life insurance policy with Farm Bureau. When Mr. Schwickerath died, the proceeds of the insurance policy were placed into a Farm Bureau annuity on September 1, 2003. This annuity remained with Farm Bureau until it was liquidated in August 2005.

The second event was the death of Orella Schwickerath on October 3, 2004. On December 27, 1995, Debtor Louise Schwickerath and her husband, John Schwickerath, borrowed \$47,800 from Orella. To memorialize this obligation, they signed a promissory note which is part of this record. Subsequently, no payments were made, either principal or interest, toward this obligation. When Orella died, her estate attempted to collect this note. Louise Schwickerath made a settlement offer of \$10,000. The Orella Schwickerath Estate filed a lawsuit against Debtor on May 23, 2005 alleging that principal, interest, default interest, attorney's fees, and other costs associated with this promissory note now totaled in excess of \$107,000.

Louise Schwickerath was prepared. She met with an attorney to discuss the viability of a bankruptcy proceeding as early as June 24, 2004. She commenced a course of estate management preparing for the possibility of filing a bankruptcy petition under conditions most favorable to her. She began preparing schedules with her attorney shortly after the lawsuit in the Orella Schwickerath Estate was filed in May 2005 and filed her Chapter 7 petition on September 15, 2005.

It is alleged that Mrs. Schwickerath took steps to protect her estate in several broad categories. First, she utilized the annuity from her deceased husband's life insurance to maximize her exempt assets. Secondly, Debtor, through failure to list assets, through incorrect labeling of liens, through intentionally undervaluing property, and through intentionally misdescribing property, minimized the non-exempt property which was reported on her schedules.

The result was sufficiently successful that when her Chapter 7 petition was filed, the Chapter 7 Trustee initially categorized this estate as a no-asset case. During the course of the § 341

meeting, certain information was disclosed which caused the Chapter 7 Trustee, Wesley Huisinga, to commence a complete inventory of Debtor's estate. The Court will first discuss the facts surrounding Debtor's creation of an exempt estate and then discuss the information contained in Debtor's schedules.

#### **EXEMPT ESTATE**

In September, 2003, Mrs. Schwickerath purchased an annuity with Farm Bureau from the proceeds of her deceased husband's life insurance. By August 2005, this annuity was worth approximately \$68,500. In early August 2005, Debtor liquidated the annuity and deposited the proceeds into her bank account at First Citizen's Bank. Thereafter, during the month of August 2005, Debtor utilized this fund to generate exempt property.

She purchased a personal life insurance policy from Farm Bureau Life Insurance which was claimed as exempt in her schedules. On August 9, 2005, she paid \$9,832 to John Deere Community Credit Union. This payment liquidated an obligation to the John Deere Community Credit Union which held a purchase-money security interest on a 2005 Ford Escape. Debtor claimed the Ford Escape as exempt property. She wrote a check to the Egert Law Firm for \$1,000 for bankruptcy consultation and on September 4, 2005, she wrote a check to Attorney Rodney Mulcahy for bankruptcy representation in the amount of \$1,500. During the summer of 2005, Debtor contracted to have her home resingled, she added a breeze way, and had insulation work done to the home. On September 4, 2005, she wrote a check to Paul Kieffer, the contractor on her home, in the amount of \$13,685. Her house was claimed exempt in her bankruptcy schedules.

On August 8, 2005, Debtor wrote a check to Design Gallery, a furniture store, in the amount of \$1,713.83 for new furniture. This furniture was listed as exempt on Debtor's bankruptcy schedules. On August 23, 2005, Debtor purchased a \$30,000 cashier's check, essentially depleting her checking account. She utilized the cashier's check to purchase two guns on August 25, 2005 from Cabela's in Owatonna, Minnesota. She purchased an antique 12-gauge Franchie shotgun for \$19,999 and an antique 30 caliber Franchie Sodia rifle for \$8,999. These guns were claimed exempt by Debtor three weeks later. Debtor's bank statement at First Citizen's Bank reflects a balance of \$931.00 on September 25, 2005. On August 8, 2005, her checking account balance was \$69,331.

### **DEBTOR'S BANKRUPTCY SCHEDULES**

Debtor's schedules failed to list numerous items of property. These items include a John Deere mower with a 42-inch cutting deck. This mower was subsequently valued at \$1,200. Debtor failed to list a John Deere Gator which was subsequently estimated to be worth \$2,000. Debtor did not list a Honda generator valued at \$250. Debtor did not list woodworking equipment estimated to be worth approximately \$275. Debtor did not list the loader, bucket, and three-point mower for a 2001 New Holland tractor which items were subsequently valued at several thousand dollars.

Debtor did list the 2001 New Holland tractor with a value of \$15,000. However, she also stated that this item was subject to a security interest by Qualley Feed and Grain in the amount of \$2,500. In fact, the tractor was free and clear of any liens. She also misdescribed it as a "lawn" tractor when, in fact, it is almost a full-sized tractor.

Debtor did not disclose, in her Statement of Financial Affairs, that she had liquidated the \$68,000 annuity approximately five weeks prior to filing her petition. She failed to disclose on her Statement of Affairs that she had made payments in excess of \$600 within 90 days prior to the filing of her petition to John Deere Community Credit Union, and to Attorney Rod Mulcahy in the amount of \$1,500. She did not disclose that she had purchased the Ford Escape with a security interest which she liquidated within 90 days of the filing of her petition.

### **DEBTOR'S LIABILITIES**

At the time of the filing of her petition, Debtor listed an unsecured claim to the Estate of Orella Schwickerath in the amount of \$110,000. She also listed a credit card obligation to Cabela's Club VISA in the amount of \$10,100. Debtor's Schedule F states that this debt was incurred on August 1, 2005. Therefore, this credit card balance was incurred in conjunction with the purchase of the antique guns within five or six weeks prior to the filing of the bankruptcy petition. The only other obligation listed by Debtor is on Schedule D and H where she lists herself as a Co-Debtor for her son, Robert Schwickerath, for a loan on a tractor-trailer which he operates. The security interest holder on this obligation is Security State Bank. The evidence reflects that Debtor has never been required to make any payments toward this obligation.

### **DEBTOR'S DEFENSES**

Debtor testified that she did not intend to mislead her creditors. She testified that she had never been involved in Court proceedings previously and was nervous. She also testified that she only took three to five minutes to read over the schedules prior to signing them and now realizes that she should have more carefully scrutinized the schedules prior to their filing. She testified that, once she realized that there were deficiencies in the schedules, she amended the schedules to include any missing items and place an accurate value on them. She stated that any discrepancies in the schedules were subsequently addressed and amended.

Debtor testified that legitimate reasons existed for her to file bankruptcy. She stated that, based upon her financial condition, she was barely staying afloat each month. She testified that a consideration in the filing of her bankruptcy was the lawsuit filed by the Orella Schwickerath Estate. Finally, she testified that her son's obligation on the tractor-trailer was a consideration. She testified that she had never been required to make a payment on the truck. She testified that she had received one call from the lender. However, she was unable to specify when she received this call.

### **CONCLUSIONS OF LAW**

Section 727(a)(2) provides that a debtor's discharge should be denied when:

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed--

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

11 U.S.C.A. § 727(a)(2). To succeed on a § 727(a)(2)(A) claim, the plaintiff must prove by a preponderance of the evidence that: (1) the act complained of was done within one year prior to the date of petition filing; (2) the act was that of the debtor; (3) it consisted of a transfer, removal, destruction or concealment

of the debtor's property; and (4) it was done with an intent to hinder, delay, or defraud either a creditor or an officer of the estate. In re Korte, 262 B.R. 464, 472 (B.A.P. 8th Cir. 2001). The elements for § 727(a)(2)(B) are substantially the same except that the plaintiff must prove that the debtor transferred or concealed property of the estate after the bankruptcy petition was filed. In re Stanke, 234 B.R. 449, 456 (Bankr. W.D. Mo. 1999).

U.S. Trustee also seeks denial of discharge under § 727(a)(4)(A) which states that a debtor is entitled to a discharge unless "the debtor knowingly and fraudulently, in or in connection with the case . . . made a false oath or account." To prove a false oath, the plaintiff must show by a preponderance of the evidence that (1) Debtor made a statement under oath; (2) that statement was false; (3) Debtor knew the statement was false; (4) Debtor made the statement with fraudulent intent; and (5) the statement related materially to Debtor's bankruptcy case. In re Gehl, 325 B.R. 269, 276 (Bankr. N.D. Iowa 2005).

Statements made in schedules are signed under penalty of perjury and have the force and effect of oaths; testimony elicited at the first meeting of creditors is also given under oath. Korte, 262 B.R. at 474. For a false oath to bar a discharge, the false statement must be both material and made with intent. Mertz v. Rott, 955 F.2d 596, 598 (8th Cir. 1992); Korte, 262 B.R. at 474. Intent can be established by circumstantial evidence, and statements made with reckless indifference to the truth are regarded as intentionally false. Korte, 262 B.R. at 474. As a debtor is not likely to admit to fraudulent intent, the debtor's course of conduct and surrounding circumstances may also be considered. Gehl, 325 B.R. at 277.

As § 727(a)(4)(A) makes clear, "[t]he Code requires nothing less than a full and complete disclosure of any and all apparent interests of any kind." Fokkena v. Tripp (In re Tripp), 224 B.R. 95, 98 (Bankr. N.D.Iowa 1998) (citing In re Craig, 195 B.R. 443, 451 (Bankr. D.N.D. 1996)). The debtor's "petition, including schedules and statements, must be accurate and reliable, without the necessity of digging out and conducting independent examinations to get the facts." In re Sears, 246 B.R. at 347 (citing Mertz v. Rott, 955 F.2d 596, 598 (8th Cir. 1992)). See generally National Am. Ins. Co. v. Guajardo (In re Guajardo), 215 B.R. 739, 742 (Bankr. W.D. Ark. 1997) ("[T]he Bankruptcy Code requires disclosure of all interests in property, the location of all assets, prior and ongoing business

and personal transactions, and, foremost, honesty. The failure to comply with the requirements of disclosure and veracity necessarily affects the creditors, the application of the Bankruptcy Code, and the public's respect for the bankruptcy system as well as the judicial system as a whole.").

Korte, 262 B.R. at 474.

#### **ANALYSIS**

From June, 2004 until she filed her petition in September of 2005, Debtor was in consultation with legal counsel for the admitted purpose of considering filing a bankruptcy petition. During that time, Debtor liquidated non-exempt assets and transferred property and cash into exempt property. She liquidated a \$68,000 asset into cash and used almost the entire amount to acquire exempt assets. Because she was unable to invest the cash in other exempt assets, she purchased two antique guns which were of no practical value to her other than to generate an exemption during the bankruptcy process. Though Debtor professes legitimate motives for the purchase of these guns, the Court finds the explanation lacks credibility. In fact, after the § 341 meeting, Debtor returned the guns to Cabela's who accepted their return for a restocking penalty of approximately \$3,000.

To complete her prepetition planning, Debtor attempted to minimize her non-exempt property. She knowingly failed to list on her bankruptcy schedules the John Deere riding mower, the John Deere Gator, the Honda portable generator, the woodworking equipment and power tools, and the loader bucket and three-point mower for the New Holland tractor. These assets have a value in excess of \$5,000.

Debtor failed to divulge or explain the extent of her prepetition planning. She did not disclose liquidation and receipt of the \$68,500 annuity. She did not list or disclose payments to the John Deere Community Credit Union for the Ford automobile, the \$13,000 payment to Mr. Kieffer for household remodeling, the \$1,500 payment to Mr. Mulcahy as attorney's fees, or the purchase of the two antique guns.

Debtor falsely represented that Quality Feed and Grain held a security interest in the 2001 New Holland tractor when in fact there were no liens on this tractor. At the § 341 meeting, she misrepresented the manner in which she purchased her Ford automobile. She asserted that it was not financed and did not

disclose the encumbrance to John Deere Community Credit Union which she had liquidated the previous month. At the § 341 meeting, Debtor failed to disclose the unlisted property previously discussed.

Debtor asserts a lack of bad intent. She professes naivete and nervousness concerning the process. Her conduct, however, undermines these claims. Debtor's motive seems clear. While no explanation was provided, it is certain that Debtor made an informed decision that she would take whatever steps were necessary to avoid repayment of her obligation to Orella Swickerath and later to her probate estate. She began planning her strategy as early as June of 2004 and, over the next 15 months, methodically manipulated her assets to create an estate with no value to her only real creditor. She took liquid assets of approximately \$68,000 and commenced to turn the entire amount into exempt property.

Having turned all liquid assets into exempt property, Debtor retained non-exempt assets which were marketable and which may have generated cash to pay creditors. It is the conclusion of this Court that Debtor intentionally failed to list these assets with the intent to place them outside the reach of the Trustee.

In all, Debtor entered into a long-term concerted effort to create an estate which had the appearance of containing no assets for administration. In fact, however, without the careful planning of Debtor, there were probably sufficient assets to pay Debtor's creditors in full. The only significant creditor to be paid was the Estate of Orella Schwickerath with a claim slightly in excess of \$100,000. With little effort, the Trustee would have been able to locate assets of \$75,000 to \$80,000 and probably more. Instead, Debtor went to great lengths to attempt to create a no-asset estate. At the time of filing of her petition, Debtor listed assets of \$227,710. Through manipulation of assets, she was able to claim exempt property of \$213,000.

Based on the entire record, the Court is overwhelmingly satisfied that Debtor knowingly and intentionally maximized her exempt estate to defraud creditors. In the preparation of her petition and schedules, she knowingly and intentionally concealed the extent of these transactions. For those assets which she was unable to claim exempt, she failed to list property which could be easily liquidated and turned into cash for the estate. For assets which she did list, Debtor intentionally misdescribed the property. The Court could go through each asset and describe with some certainty what Debtor intended by her actions. However, that is unnecessary. It is sufficient to state that



Debtor intentionally and knowingly set out to describe the assets which she did list in her schedules as being of little or no value to the Trustee. Initially, she was sufficiently convincing that the Chapter 7 Trustee felt that this would be a no asset case.

It is now clear that Debtor intentionally manipulated this estate to avoid leaving even a morsel on the table for the only creditor. It is the conclusion of this Court that Debtor Louise Schwickerath concealed transactions with the intent to hinder or defraud creditors and the bankruptcy trustee. Further, it is the conclusion of this Court that Debtor Louise Schwickerath, with fraudulent intent, knowingly made false oaths by failing to disclose these activities on her bankruptcy schedules or during her testimony at the § 341 creditor's meeting. It is further the conclusion of this Court that the U.S. Trustee has proven the elements of §§ 727(a)(2) and 727(a)(4)(A) by a preponderance of the evidence. Debtor Louise Schwickerath's discharge must be denied.

**WHEREFORE**, the U.S. Trustee's complaint objecting to the discharge of Louise M. Schwickerath is GRANTED.

**FURTHER**, Debtor Louise M. Schwickerath's discharge is DENIED.

**FURTHER**, judgement shall enter accordingly.

Dated and Entered: November 1, 2006



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PAUL J. KILBURG  
BANKRUPTCY JUDGE